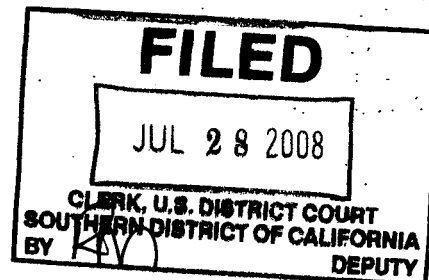


Name Preston Moore
 Address Po Box 5008
M2-64 Low
Calipatria, CA 92233
 CDC or ID Number F95661



Supreme Court
Southern District of California
 (Court)

**FIRST AMENDED
 PETITION FOR WRIT OF HABEAS CORPUS**

No. 08CN1207 LAB (WMC)
 (To be supplied by the Clerk of the Court)

<u>Preston Moore</u>	
Petitioner	
vs.	
<u>Harry Smalls - Warden</u>	
Respondent	

INSTRUCTIONS — READ CAREFULLY

- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies.
- If you are filing this petition in the California Supreme Court, file the original and thirteen copies.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under Rules 56.5 and 201(f)(1) of the California Rules of Court (as adopted effective January 1, 1992). Subsequent amendments to Rule 44(b) may change the number of copies to be furnished the Supreme Court and Court of Appeal.

This petition concerns:

- ☒ A conviction
☒ A sentence
☐ Jail or prison conditions
☐ Other (specify): _____
- ☐ Parole
☐ Credits
☐ Prison discipline

1. Your name Preston Moore
2. Where are you incarcerated? Cali Patric A State Prison
3. Why are you in custody? ☒ Criminal Conviction ☐ Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

- a. If criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon") or state reason for civil commitment: Alleged theft, Theft by use of Computer, Fraud, Conspiracy, Aiding and Abetting, Wire Fraud
- b. Penal or other code sections: _____
- c. Name and location of sentencing or committing court: San Diego County Superior Court
- d. Case number: SCD206353
- e. Date convicted or committed: 11-01-07
- f. Date sentenced: 11-01-07
- g. Length of sentence: 3 years
- h. When do you expect to be released? 4-1-09
- i. Were you represented by counsel in the trial court? ☒ Yes. ☐ No. If yes, state the attorney's name and address: Fredrick J. McCullen (McCullen)
Broadway San Diego, CA

4. What was the LAST plea you entered? (check one)

- ☐ Not guilty ☒ Guilty ☐ Nolo Contendere ☐ Other _____
With Attorneys Advice

5. If you pleaded not guilty, what kind of trial did you have?

- ☐ Jury ☐ Judge without a jury ☐ Submitted on transcript ☐ Awaiting trial

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. (For example, "the trial court imposed an illegal enhancement.") If you have additional grounds for relief, use a separate page for each ground. Page 4 is designed so you can state ground 2. For additional grounds, make copies of page 4 and number the additional grounds in order.

Ineffective Assistance of Counsel

See
Additional
pages

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. If necessary, attach additional pages.

CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

On about May 2007, I was extradited to San Diego, California for a crime I didn't commit, nor have I ever been in the state nor a resident. I'm from the State of Georgia. I am a Certified paralegal from a Georgia law firm Mann Brecken LLC. I have a Collection Agency that I ran part time for the past 18 years. I posted my resume on Career Builder.com a Job site for parttime work due to my wife being ill. I was contacted by email from a Company "Eurofinance Company" a Russian Based Company doing business in the State of New York. On or about Jan 2007 this Company contacted me via email and said I fit the criteria of the US Sales rep they were looking for. They did a background check on me taking all personal information from me, Driver license, Address, Social Security etc.

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

7. Ground 2 (if applicable):

Misleading and Misrepresentation by Counsel

See additional
pages

a. Supporting facts:

b. Supporting cases, rules, or other authority:

8. Did you appeal from the conviction, sentence, or commitment? ☐ Yes. ☒ No. If your answer is yes, give the following information about your appeal:

Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court") _____

Result _____ Date of decision _____

Case number or citation of opinion, if known _____

Issues raised: a. _____

b. _____

c. _____

d. _____

Were you represented by counsel on appeal? ☐ Yes. ☒ No. If yes, state the attorney's name and address, if known. _____

9. Did you seek review in the California Supreme Court? ☐ Yes. ☐ No. Result _____

Date of decision _____ Case number or citation of opinion, if known _____

Issues raised: a. _____

b. _____

c. _____

d. _____

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal: Attorney never suggested and appeal, Attorney stated he would get me Probation if I took full responsibility of this crime I didn't commit.

11. Administrative Review:

- a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In Re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].)

Explain what administrative review you sought or explain why you did not seek such review:

- b. Did you seek the highest level of administrative review available? ☐ Yes. ☐ No.
 Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you previously filed any petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? ☐ Yes. If yes, continue with number 13. ☒ No. If no, skip to number 15.

13. (1) Name of court _____

Nature of proceeding (for example, "habeas corpus petition") _____

Issues raised: a. _____

b. _____

c. _____

Result (Attach order, if available) _____

Date of decision _____

(2) Name of court _____

Nature of proceeding _____

Issues raised: a. _____

b. _____

c. _____

Result (Attach order, if available) _____

Date of decision _____

For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result.

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

16. Are you presently represented by counsel? ☐ Yes. ☒ No. If yes, state the attorney's name and address, if known.

17. Do you have any petition, appeal, or other matter pending in any court? ☐ Yes. ☒ No. If yes, explain.

unsure not from this state extradited

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court.

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: 7-24-08

[Signature]
(Signature of Petitioner)

PRAYER FOR RELIEF

{Describe what you want the court to do.}

Re-open this case in order for documents to be presented to the courts such as emails, copies of checks, Bank statements, copy of polygraph etc. to prove my Innocence. Petitioner is without remedy save by writ of habeas corpus.

WHEREFORE, petitioner prays the court:

gives me a fair chance
to prove I'm innocent
and to let it be known that
my counsel didn't act in
my favor, and there
was no way San Diego

could have prosecuted the wrong man. If so this case cannot
16-2-3 I recieved the upper term with no priors. I didn't commit
also grant any other and further relief the Court deems proper. the crime,

I have been away from my family.
Obtained a Criminal record.
falsely accused with no help 2500 miles
from home
I need this matter expunged from my record.

DATED: 7-24-08

Respectfully submitted,

(Signature) John M. [Signature]

(type your name here)

(A)(i) Continued Supporting Facts

This company "Euro finance corporation" said I would be collecting from their US clients for goods and services purchased by certain US customers. They said since I had a collection Agency I would be perfect for the job and I was selected over 100's of Applicants. They later sent over a Contract stating the outline of my position and the percentage of my salary which was 10% of the gross dollar collected. I recieved and email a few days later stating I should be receiving a wire transfer from a San Diego base real estate company by the name of Janis properties (San Diego also) in the Amount of 108K for a Dec. my job was to take my percentage and wire Euro finance the 90% due to them. They said if I didn't I would be prosecuted, so we wanted to make sure we did a good job and made no mistakes. After contacting my Georgia Bank, They → over

A2

Stated we had a wire transfer from a Janis Properties in San Diego, CA So I went down and filled out the forms to send the funds where the email specified. Three days later my banker called and said the person that sent the transfer ~~was~~ was a fraud. I was shocked because usually the Federal Reserve verify funds over 10K. They told me to call them and try to recover the funds. I dialed the number given in which was a fax machine I sent an email and never heard back from Euro Finance Company. "about 90 days later I got a visit at my home in Georgia from the Atlanta police telling me that I had the Asst DA and a Detective from the San Diego Catch team wanting to talk to me. Atlanta Detective said they were looking for the Mastermine. They questioned me for approx 3hrs at my home, also they had a search warrant to look for computer documents.

A3

"Continued supporting Facts"

I knew I wasn't the Mastermind of this crime. By that time I said this company Euro finance used me as a fall guy for their crime. I never spoke to anyone from that company nor did I meet with anyone. So Georgia took me down and detained me for (25) days then they said San Diego wanted to extradite me to ~~the~~ State of California where I never been before. In which they jumped the gun assuming that I was the Mastermind. I could have fought the extradition but I was confident that I was not their man, I knew I was duped by this Euro finance. they hacked into first Republic Bank and transferred funds to my account in the State of Georgia. Seems as though the "San Diego Catch team Detectives" had just left New York and New Jersey trying to catch these perps before they met me over

A4

the Internet. If I would have known they were ~~stealing~~ stealing monies from business in the US I would have never went to work for them. I decided to go to San Diego to clear up my name since I had no felanys nor any prison priors or no pattern of related crimes, also I'm a family man with a wife of 17 years and 4 beautiful children ages 21, 16, 14, 7 my oldest daughter had just started her 1st year of College at michigan State this was very embarrising for my family I had also just recieved a promotion at the law firm as Asst to the Georgia Legal Attorney, and if I was guilty why would I use my business Account with the Correct Address and Identifcation on myself.

(AS) "Continued Supporting Facts"

So I Sat in the County Jail and then ^{they} Sent me to George Bailey Corrections facility with a bail set at 750K. At the Preliminary I waived to hire a paid Attorney referred to my relatives in Atlanta Georgia, my home state. I recieved a visit from a Fredrick McAllen Attorney at Law. I gave him my Statement regarding the Matter. So he was waiting on payment via wire from my wife and aunt. He showed up for the Arraignment where I plead not guilty of these alleged Charges. The DA had the Catch team detective take the Stand he was asked do he fill like I was doped he said yes at first! He also stated in Court he knew I wasn't the Master mine but the (DA) wanted to charge me with "Adding And Abusing" →

(A6)

I had never set down and planned anything with this outfit Euro Finance to make me add and abiding, they deceived me on a jobsite I'm sure I'm not the first to fall for this professional scheme. I sat in and listed to the DA say I was a part of them and we were stealing money from all over the United States which was untrue. I never hacked and my computers proved that there was no file play with them. Georgia kept my computers and California had me. My paid counsel later got me a bail reduction and I had to find someone to except out of State property since I was not a resident of California. After several attempts I found a bondman to bail me out. I went back to Georgia and started back to work at the law firm.

A7

continued Supporting facts

I Couldn't believe what had happened to me, I'm a good citizen and never had any problems with Theft in my life. I'm in my mid 40's and wouldn't jeopardize my family or my life. I had to fly back in forth to hearings in San Diego. My Attorney said he was trying to get time served, then he said we might have to infiltrate Euro finance. then he said the DA was happy with me so after back and forth trips "I asked what do I need to do to keep from going to prison" at this point he was ready to relieve himself after being paid to represent and out of towners. He said take full responsibility and I will get you probation. so I was kind of relieved, he said if any you will get a county year!

(A8)

I was just wanting to get this behind me. So after signing the plea of All the Charges per his request! He said go by Probation and check in before I got on a plane and traveled back to Atlanta, still out on bail. He said the probation supervisor Shanna Burke would be contacting me for a phone interview. I told her I made a big mistake and was very sorry but I didn't know they were Crooks. I trusted them. Later I got a call from my attorney and he said probation stated I wasn't suited for probation in the State of California and wouldn't be eligible for interstate Compact since I didn't live in the State. I was stunned that my Counsel would even suggest probation and have me plea to charges I didn't commit. Now I am serving a (3) year term in prison and the Criminals got away. I feel like this Attorney didn't work in my favor.

~~##~~ Ground 3

(A9)

Incompetance Counsel

I don't believe any Motions were filed on my behalf, nor was there an investigation from San Diego, nor my attorney, they rushed to Judgement before the ballistics came back from my computers. I never hacked into any banks, at first I was facing Aiding and abetting with the DA's charges but after listening to my Attorney I'm stuck with all charges, those that in which I didn't commit. he also said he knew I was innocent of these crimes. why did this happen, where's Justice today I had no restitution with the (DA) but after plea they said I owe 89K this was paid by the victim's Insurance before I came to sentencing, the Attorney said this matter would be civil

A(10)

between me and the Insurance Company but since I've been in prison the Counselor States I need to pay it all before I can transfer back to my home, this was not what I was told. also the DA took 26K from my home that belonged to my clients for collections services it haven't showed up yet, nor has it been applied toward restitution. My family is working on finding out where did these funds go. I'm looking for Justice in this matter not to mention the Fed's in Georgia gave me a polygraph in which I passed and my bank wrote a statement on my behalf, this was a rush to judgement case the perps even was sending me emails while I was incarcerated. and sent another check my wife sent it to the Attorney. No due process!